

Salvage law: stipulations and amendments

Law



Salvage law dictates the “ service voluntarily rendered in relieving property from an impending peril at sea or other navigable waters by those under no legal obligation to do so. ” Thus, under maritime law, salvage refers to the act of ‘ rescuing’ or recovering certain objects in a deteriorating or perilous state at sea of people who have no legal responsibility (e. g. marines, navy). Salvage law also narrates the right of the salvor to proper compensation from the owner of said material property.

This law inhibits embezzlement on the part of salvors and encourages attempts to save property. The basic stipulation of the law embodies the following areas: property, life, and treasure salvage. Basic premise of a salvage claim must fulfil the following criteria :

1. There must be a marine peril placing the property at risk of loss, destruction or deterioration.
2. The salvage service must be voluntarily rendered and not required by an existing duty or by special contract.
3. The salvage efforts must be successful, in whole or in part. Stress is given on the accomplishment of the attempt in order for monetary privileges to be given. With regard to the first requirement, the question lies on the state of a marine vessel or ship that exposes or threatens certain properties to loss or destruction.

‘ The danger need not be imminent or actual; all that is necessary is a reasonable apprehension of danger. However, if the vessel has the situation under control, there is no peril. In order for salvage law to act upon its tenets, there must be a reasonable cause or status of danger on a maritime

vessel as well as its property on board. If there is no threat of danger, materials contained from such cannot be considered as salvage.

The degree of danger or peril is distinguished through the level of amount in salvage compensation but does not necessarily guarantee the right to compensation. As stated ' The degree of peril, whether slight, moderate or sever, affects only the amount of the award, but not the entitlement of the salvor to a salvage award. In addition, maritime vessels that are driven aground, reefs, shoals, reefs, or any other impeding natural obstacle are considered to be in a state of danger. In such cases where vessels are exposed to natural forces such as gales, waves, or stormy weather, and places itself in a helpless situation that leads to further damage and threat of submersion, the principles of salvage rule applies. Second, the voluntary nature in the act of salvage is determined through an individual or party's legal right to provide assistance.

Professional salvors who mainly act of economic gain are not exempted from the rule; they are also considered as ' volunteers' in the part of regaining threatened property. Lastly, the third requirement falls under the ' no cure, no pay' under the principle of salvage rule wherein the act itself must be successful in order to fall under the requirements of proper compensation. A ' no cure, no pay' scenario a salvor may only be paid if the operation is successful whereas a contract salvaging necessarily pays the salvor at a fixed rate whether or not the rescue attempts may be successful or not.

On liability, the salvor has the responsibility of performing the salvage effort with skill; any property damaged during the attempt will reduce the award

amount. The salvor however, when the operation is unsuccessful, is not held responsible for the loss sustained by property owners otherwise caused by erratic or irresponsible behavior. Salvage law is based on the right of the salvor to proper compensation for the labor provided not to the title of property or loot during the operation itself.

Salvage and Towage. The basic difference between the two principles lies on the degree of danger on the part of salvage situations whereas towage simply involves the ' service that is based on the employment of one vessel to expedite the voyage of another when nothing more is required than the acceleration of her progress. ' Towage involves the consideration for convenience where vessels only require assistance in completing its journey. Acts of towing vessels without the presence of danger does not fall under salvage rules; owners of said vessels are not entitled to pay the salvage compensation on the part of the volunteers.

Again, the necessity for a salvage claim falls under the degree in which the property is in danger. The distinguishing fact between the two claims is that towage is the lack of danger. Contract Salvage Documents such as salvage contracts is a clear stipulation for the need of clarification on the terms of payment concerning owners and salvors as well as specific criterion in which the degree of safety of salvaged properties are agreed upon. These criterions may pertain to issues such as security, interest, legal fees, and arbitration, among others.

However, the basic requirement for salvage contracts to work upon still lies on the success of the operation itself, otherwise the contract may be

considered null and void unless working on a certain specification such as fixed rate that does not rely on the success of the operation. This specification falls under contractual salvage services wherein parties involved work for economic gain rather than acting on volunteer efforts. Another distinction is made if the assigned contract has fixed compensation applicably paid upon the success of the operation, it falls under a fixed 'no cure, no pay' contract.

Difference is made between a 'pure' salvage operation wherein individuals or parties involved are considered volunteers in the strictest sense of the word where there is no contractual agreement between property owners and salvors. Contract salvage enables concerned parties to rescue property after disclosing an agreement regarding the safety of salvaged property and efforts which involve its recuperation will be compensated accordingly.

Treasure and Property Salvage. As stipulated in the above requirements under salvage law, a salvor is entitled to compensation not the right to property of the salvaged materials. The right of ownership is immediately assumed to be still within the power of the owner. This rule also applies to properties that are abandoned by its owner and thus cannot be claimed as personal property of salvors. Salvage law must also be contrasted with the law of finds where the ancient principle 'finders keepers' applies.

It is understood that abandoned properties in order for the law to be applicable, must have consent from the owner that expresses abandonment on the right of ownership to the property. If no consent is given, then the salvage rule applies. The only probable dilemma in the rule of salvage and

finds is on treasure and artifacts on ancient shipwrecks where no rules apply. Life Salvage Maritime law does not clearly specify any stipulation to salvage compensation or reward during operations concerning the involvement of people or 'life salvage'.

The distinction is made wherein there is no concept of 'property' in lieu with salvage law requirements. Any salvor who may save a human life does not declare any right of property to the person saved, the owner, or contents of cargo. However, the US Standby Act provides the responsibility to ship captains to ensure or render assistance to any person who is in danger at sea while maintaining safety and command over his/her own vessel. [A] master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost. ' In cases where life and property are involved, there are certain circumstances in which the salvage award is increased with regard to the nature of the properties rescued as well as considering the lives saved. However, this stipulation is often negated with the notion of assistance or volunteerism on the part of the salvors.

Compensation

In determining compensation, The Blackwall provides six factors in which the nature of salvage award falls under:

1. The degree of danger from which the vessel was rescued.
2. The post-casualty value of the property being saved.
3. The risk incurred in saving the property from impending peril.

4. The promptitude, skill, and energy displayed in rendering the service and salving the property.
5. The value of the property employed by the salvors and the danger to which it was exposed.
6. The costs in terms of labor and materials expended by the salvors in rendering salvage service.

In considering the compensation, the peril the vessel is placed upon must be taken into account as well as the danger(s) brought about by the situation that may lead to the behavior or actions of the salvors. In addition, salvors are not encouraged to increase time and effort with regard the operation in hopes of enhancing the reward in terms of willingly increasing the damage of a vessel. After enumerating the basic stipulations of the salvage law, we turn to the SCOPIC and the salvage convention in order to determine the differences of policy and/or rule with regard to maritime law.

The LOF, SCOPIC, and Salvage Convention The following amendments on the nature of salvage law deals with the special and specific circumstances concerning the nature and amount of reward in terms of the nature, effort, and other requirements in contrast with the basic precepts of the law.

Lloyd's Open form of Salvage (LOF) is a standard legal document created by London-based insurance company Lloyd's of London in lieu with maritime salvage operations wherein the company acts as an arbiter between owner and salvors concerning retrieval operations.

The legal document is literally 'open' because it does not specify any amount of money for salvage operations in the beginning of any contractual agreement. The amount is later arbitrated by a representative of the <https://assignbuster.com/salvage-law-stipulations-and-amendments/>

company for the services rendered of the salvors within the degrees of distinction that are combined with the precepts of salvage and law and of the policies of the company..

The open form's characteristics are enumerated as thus : the salvor enters to an agreement with the contract to utilize ' best efforts' to save the vessel along with cargo and to ensure its safe delivery to a prescribe place of safety; the services performed fall under the no ' cure, no pay' principle; the services prior to the signing of the contract is taken into consideration; the concerned parties may use vessel equipment free from charge from the salvor(s); the amount of the reward is determined by a committee at the company or an assigned arbitrator for the specific case; the method of arbitration is bound to London and English laws; and lastly, an appeal on the nature of the arbiter's award to the committee. Thus, the nature of the LOF is legally concerned on a partial agreement between concerned parties which specifically takes the agreement into more formal terms wherein the salvors has the advantage of higher remuneration for services rendered compared to the normative conditions of Salvage law.

This provision is intended for contractual or professional salvage operations determined by success. The agreement does not fall under special contractual services since the determinants in such agreements are dependent of fixed rates and whether or not the operation would be a success. In relation to the International Convention of Salvage of 1989 (herewith known as IMO) and the basic provisos of the Salvage law, amendments are made mainly concerning the identification of instances that enable salvers the right to attain special compensation which in essence still

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falls under the 'no cure, no pay' principle. Similar to the Salvage law and the LOF, the amendment in the IMO remain on the original position of the first law.

The main difference lies on the formation of a requirement in order to attain special compensation on the part of the salvors within the additional terms external factors and material usage. In contrast with the 'open' monetary provision of LOF, the agreement between the owner and salvors are direct instead of relying on a third party neutral mediator. Chapter III of the IMO discusses the right of salvors in terms of the operations itself, notably the following sections. Article III, section 2 states: 'Except as otherwise provided, no payment is due under this convention if the salvage operations have had no useful result.' Similarly, the provision still falls under the original stipulations of the Salvage law.

However, specifications are made on the preceding article and sections such as Article 14, Section 1 states: If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to the special compensation from the owner of that vessel equivalent to his expenses as herein defined. In contrast with The Blackwall criteria on the basis of the award system on salvage law practices, the IMO convention amends the aforementioned requirements as stated in Article 13:

1. The salvaged value of the vessel and other property.

2. The skill and efforts of the salvors in preventing or minimizing damage to the environment.
3. The measure of success obtained by the salvor.
4. The nature and degree of danger.
5. The skill and efforts of the salvors in saving the vessel, other property, and life.
6. The time used and expenses and losses incurred by the salvors.
7. The risk of liability and other risks run by the salvors or their equipment.
8. The promptness of the services rendered.
9. The availability and use of vessels or other equipment intended for salvage operations.
10. The state of readiness and efficiency of the salvor's equipment and the value thereof.

The aforementioned amendments differ from the prior stipulations on the grounds of external or environmental factors and the specifications of compensation with regards to the nature of the operation itself. The amendments however still fall under the principle of the operation's success in determining the right to the specified compensations. Article 14 provides that individuals may only receive special compensation, which include proper remuneration for expenses such as equipment used during the recovery operations, are not properly compensated by the salvage fee. The difference then is shown between the International Convention on Salvage law and the LOF.

In contrast with the basic stipulations of the salvage law, the salvage amendments and the LOF stress on the importance of compensation and award through specifications of instances wherein concerned parties are properly paid with the addition of compensation for used equipment as presented in Article 14. Section two of the same article provides a mark increase and further specification on which the terms of agreement between owners and salvors may agree upon. If, in the circumstance set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor.

The prior amendment furthers the exact amount of compensation as opposed to the basic stipulations in The Blackwell provisions. Further, the SCOPIC clause aims for the endorsement of the 1989 amendments but subsequently present tariff in relation to provisions in the special compensation section. The clause also functions to supplement the LOF which includes the provisions in Article 14. The main premise of SCOPIC is: ‘ the contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstance and, in particular, regardless of whether or not there is a “ threat of damage to the environment. ’

As a supplement, the clause acts as a special addition on the part of salvor in terms of remuneration that further adds benefits upon completion of the necessary requirements found on Article 13 in the IMO. In relation to the provisions set in the LOF, the SCOPIC clause may be invoked at any time by <https://assignbuster.com/salvage-law-stipulations-and-amendments/>

the contractor or the salvors whether or not it adheres to the stipulations made in Article 13, specifically the threats to environment regarding the operation itself. Differentially, the Special Casualty Representatives (SCRs) act as the same function as that of LOF mediators but are appointed by owners in order to determine that nature of the operation. In addition, any award mentioned in the ten amendments in the IMO is discounted by at least 25% of the amount on a basis that it exceeds the totality of Article 13 awards:

In addition to the rates set out above and any out of pocket expenses, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses described. Sharply contrasting the provisions set in article 13, the clause provides an alternative method in enabling to negotiate claims outside the LOF and the IMO with referral to the proposed tariff systems regarding vessel tugs, equipment, and manpower. In contrast, the LOF does not grant power over salvors to terminate a previously agreed LOF contract which obliges the salvage team to perform their responsibility in their best attempt. However, clause 9 of the SCOPIC states:

The contractor shall be entitled to terminate the services under the SCOPIC clause and the main agreement by written notice to owners of the vessel if the total cost of his services to date and the services that will be need to fulfill his obligations hereunder to property will exceed the sum of: a. The value of property capable of being salvaged; and b. All sums to which he will be entitled as SCOPIC remuneration. The provision gives the equal right on the <https://assignbuster.com/salvage-law-stipulations-and-amendments/>

part of salvors to maintain the power of bargaining if and only if circumstances arise in relation to the aforementioned provision. Conclusion In summation, the nature of salvage law is highly dependent on the manner in which material or physical objects are retrieved in relation to the degree of danger the operation is carried out. The law is divided into contract, treasure, and property salvage.

As such any act of salvage in the part of salvors is entitled to proper compensation coming from owners of said materials in danger. The nature of salvage is differentiated with towage in the sense that the former is situational; the process in which materials are retrieved must be in context with immediate danger or deteriorating physical conditions of vessels that also provide threat to cargo or passengers whereas the latter is concerned with assistance of an incapacitated sea vehicle in completing the journey without any threat on the physical well-being of the vessel. Salvors are necessarily implied as volunteers, in the altruistic sense of the word, where individuals who do not have legal responsibilities in undertaking recovery operations.

However, salvage law also applies to legal operations unit such as the marines or the coast guard who are also applicable under proper compensation rights in exceeding the standard requirements of duty in the process of operations. Salvors may also be applied to professional and economical groups who provide their service under a fixed rate of compensation with also a contractual understanding that the award may be paid whether or not the operation is a success. The stipulations from the LOF agreement, IMO convention, and the SCOPIC clause mainly act as <https://assignbuster.com/salvage-law-stipulations-and-amendments/>

specifications of the tenets provided in the Salvage law wherein the LOF is a third-party bargaining agreement that takes into account the original provisions of the law and the amendments stipulated in the IMO (e. g. o cure, no pay principle) but does not specify the amount of remuneration on the part of the salvors with the understanding that the amount is negotiated upon by the owners and salvors with a mediator. This functions as a non-government independent body concerning the bargaining nature of the law. On the other hand, the IMO convention is the amendment of the principles stated in the original depositions of the salvage law such as the duty to provide assistance whenever necessary with the additional tenets concerning environmental factors, coastal states, elaboration of duties/party responsibilities and the special compensation system upon compliance of requirements.

The IMO amendments also function as a specific response to contractual salvage operations in order to properly accord the reward system as well retaining the original In contrast with the original positions, the IMO amendments, specifically stated in Article 13, specifically adds that the environment must be taken into consideration in minimizing or preventing damage in order to qualify for the award. Equipment is also taken into the jurisdiction as the salvors have the responsibility to not increase liability that equipments might cause during the process of retrieval or upon the materials itself. In relation with contractual agreements, the amendments also cover the professional viewpoint of hired salvage service as it is necessary for promptness or strict compliance to procedures in order to be considered legal. The added provision leads to the creation of the special

compensation section where salvors may be duly compensated with the equipment used during the operations if the fee does not suitably fulfill the expenses.

Lastly, the SCOPIC clause functions as an additional provision on the LOF agreement where added provisions are given in behalf of the salvors themselves which in this sense equally provide a sense of equal bargaining power with owners. The clause mainly calls for the power of salvors to terminate existing LOF contracts during circumstance wherein the contractors (salvors) anticipate that the service will exceed the value of the property retrieved and the sums stipulated in SCOPIC remuneration. The basic LOF agreement necessarily state the inability of contractors to terminate their contracts as the owners have complete right over their services during salvage procedures. Salvors are necessarily obligated to act upon to the best of their ability to perform the operation to success in order to qualify for the award.

However, the SCOPIC clause, with reference to the provisions set by the basic Salvage law, the LOF, and IMO provide an extension of power for contractors in terms of remuneration agreements wherein the procedure itself, if it exceeds certain requirements, duly grant the power of salvors to terminate the contract. In addition, the appointment of an SCR is important upon agreement of both parties and exercise of the SCOPIC clause. The SCR is then obligated to attend the operation itself with a number of representatives appointed by a committee. Thus, the salvage law and the aforementioned provisions discuss the general idea jurisdiction and nature of the law and amendments made to cover certain concerns.

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